

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

**MATT MCCORMICK, INDIVIDUALLY  
AND ON BEHALF TWO CLASSES**

*Plaintiff,*

V.

**Civil Action No.** \_\_\_\_\_

## ICE ENTERPRISES, INC.

*Defendant.*

## NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant ICE Enterprises, Inc.<sup>1</sup> (hereafter “Defendant”), hereby gives notice and removes to this Court the state-court lawsuit described below, and as grounds for removal states as follows:

## **NATURE OF THE ACTION**

1. On September 2, 2022, Plaintiff Matt McCormick, individually and on behalf two classes (“Plaintiff”) commenced the matter styled *Matt McCormick, individually and on behalf two classes v. ICE Enterprises, Inc.* in the District Court of Denton County, Texas, 431st Judicial District, and bearing Cause No. 22-7396-431 (the “State Court Action”). A true and copy of Plaintiff’s Original Individual and Class Petition (the “Petition”) is attached as Exhibit C.

## **TIMELINESS OF REMOVAL**

2. Defendant was served with Plaintiff's Petition on September 14, 2022.

3. This Notice of Removal is timely because it is being filed on October 14, 2022, which was served on September 14, 2022 (i.e., within thirty (30) days of service of Plaintiff's

<sup>1</sup> Defendant is incorrectly named ICE Enterprises, Inc. It is correctly named ICE Enterprise, LLC.

Petition). *See* 28 U.S.C. § 1446(b). Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the lawsuit has been pending is in this district and division.

**JURISDICTION UNDER 28 U.S.C. §§ 1331, 1332 and §1441<sup>2</sup>**

4. This Court has original subject matter jurisdiction of the State Court Lawsuit under 28 U.S.C. § 1331, in that this case arises under the Constitution, laws, or treaties of the United States and this district court has original jurisdiction.

5. In his Petition, Plaintiff asserts claims under and seeks damages under the Telephone Consumer Protection Act (“TCPA”) 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200. *See* Ex. C, at ¶¶ 5.2-6.3, 9.3, 9.4-9.9; 12.3; and 15.1.2.

6. Additionally, this Court has original subject matter jurisdiction of the State Court Lawsuit under 28 U.S.C. § 1332, in that (1) the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (2) is between citizens of different states.

7. In his Petition, Plaintiff specifically allege damages in excess of \$1,000,000. *See* Exhibit C, at ¶ 13.1. The amount in controversy therefore exceeds \$75,000.

8. Defendant is a limited liability company formed under the laws of the State of Idaho. It is made up of two members, David Drake and Jeffery Petty, each of whom are individuals residing in Idaho; therefore, Defendant is a citizen of the State of Idaho.

9. Plaintiff is an individual residing in Denton County, Texas; therefore, Plaintiff is a citizen of the State of Texas.

10. Because Plaintiff is a citizen of Texas and Defendant is a citizen of Idaho, complete diversity of citizenship exists between Plaintiff and Defendant. The amount in

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<sup>2</sup> The jurisdictional allegations of this Notice were true at the time the State Court Action was commenced and remain true as of the date of filing of this Notice of Removal.

controversy is in excess of \$1,000,000. Accordingly, there is complete diversity of citizenship, and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. This makes this case removable under 28 U.S.C. § 1441.

### **PROCEDURAL REQUIREMENTS**

11. Defendant reserves the right to submit additional evidence and assert supplemental grounds in support of removal as appropriate in the future. By virtue of this Notice of Removal, Defendant does not waive its right to assert any and all claims, defenses, or other motions permitted under the Federal Rules of Civil Procedure. This Notice of Removal is being filed subject to any and all such claims, defenses and other motions under the Federal Rules of Civil Procedure.

12. In the State Court Lawsuit, Plaintiff did request a trial by jury.

13. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly give written notice to all other parties and will file a copy of the notice with the clerk of the State Court Action.

14. Pursuant to Local Rule CV 81(c), attached to this Notice are:

- a. A civil cover sheet and supplemental civil cover sheet for a removed case (Ex. A);
- b. A copy of the state court docket sheet (Ex. B);
- c. A copy of all pleadings that assert causes of action (Ex. C);<sup>3</sup> and
- d. A copy of all process and orders served upon the party removing the case to this Court as required by 28 U.S.C. § 1446(a) (Ex. D).

15. Removal of this action is proper under 28 U.S.C. § 1441, since it is a civil action brought in a state court, and the federal district courts have original jurisdiction over the subject matter under 28 U.S.C. §§ 1331 and 1332. Removal of this action is proper under 28 U.S.C. § 1441(b)(2) because no defendant who is a citizen of Texas has been properly joined and served.

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<sup>3</sup> This notice is filed prior to ICE's filing of its answer.

16. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the 431st Judicial District Court of Denton County, Texas promptly after the filing of this Notice.

**CONCLUSION**

17. Defendant hereby timely removes this action from to the 431st Judicial District Court of Denton County, Texas to this Court.

Dated: October 14, 2022

Respectfully submitted,

*/s/ Dee Kelly, Jr.* \_\_\_\_\_

Dee Kelly Jr.

State Bar No. 11217250

[dee.kelly@kellyhart.com](mailto:dee.kelly@kellyhart.com)

**KELLY HART & HALLMAN LLP**

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Tel. (817) 878-2500

**ATTORNEY FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing is being served on all counsel of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2), on October 14, 2022:

Chris Miltenberger  
Law Offices of Chris Miltenberger, PLLC  
1360 N. White Chapel Rd., Suite 200  
Southlake, Texas 76092  
Tel. (817) 416-5060  
[chris@crmlawpractice.com](mailto:chris@crmlawpractice.com)

**ATTORNEY FOR PLAINTIFF**

*/s/ Dee Kelly, Jr.* \_\_\_\_\_

Dee Kelly, Jr.

# EXHIBIT A



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SUPPLEMENTAL CIVIL COVER SHEET  
FOR A REMOVED CASE (Local Rule CV-81)**

**1.**

**(a) List of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (e.g. pending, dismissed):**

Matt McCormick, Individually - **Plaintiff - Pending**

Matt McCormick, on behalf of Two Classes - **Plaintiff - Pending**

ICE Enterprise, Inc. - **Defendant - Pending**

**(b) List of attorneys involved**

Chris R. Miltenberger  
State Bar No. 14171200  
1360 N. White Chapel, Suite 200  
Southlake, Texas 76092  
Phone: (817) 416-5060

**ATTORNEY FOR PLAINTIFF  
MATT MCCORMICK, INDIVIDUALLY  
AND ON BEHALF OF TWO CLASSES**

Dee Kelly Jr.  
State Bar No. 11217250  
KELLY HART & HALLMAN LLP  
201 Main Street, Suite 2500  
Fort Worth, Texas 76102  
Phone: (817) 878-2500

**ATTORNEY FOR DEFENDANT  
ICE ENTERPRISES, INC.**

**2. JURY DEMAND**

Was a jury demand made in State Court? X Yes \_\_\_\_\_ No \_\_\_\_\_

By Plaintiff on September 1, 2022.

**3. COURT FROM WHICH CASE IS BEING REMOVED**

431st Judicial District Court  
Denton County  
1450 E. McKinney St., 4<sup>th</sup> Floor  
Denton, Texas 76209

# EXHIBIT B

**REGISTER OF ACTIONS**[CASE NO. 22-7396-431](#)**Matt McCormick, Individually and on Behalf Two Classes VS. ICE Enterprise, Inc.**§  
§  
§  
§  
§

Case Type: **Debt/Contract: Consumer/DTPA**  
 Date Filed: **09/01/2022**  
 Location: **431st Judicial District Court**  
 Judicial Officer: **Johnson, James S.**  
 File Custody/Location: **District Clerk's Office**

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**PARTY INFORMATION**

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**Defendant** **ICE Enterprise, Inc.**

**Attorneys**  
**Chris R. Miltenberger**  
*Retained*  
 817-416-5060(W)

**Plaintiff** **McCormick, Matt**

**Chris R. Miltenberger**  
*Retained*  
 817-416-5060(W)

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**EVENTS & ORDERS OF THE COURT**

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**OTHER EVENTS AND HEARINGS**

09/01/2022	<u><a href="#">Original Petition/Application</a></u> <i>Plaintiff's Original Individual and Class Petition</i> Filing Party: McCormick, Matt	
09/08/2022	<b>Citation</b> env#68051400	Requested By McCormick, Matt Served 09/14/2022 Anticipated Method Personal Returned 09/15/2022
09/15/2022	<u><a href="#">Service Returned</a></u> <i>Citation for ICE Enterprises, Inc</i>	

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**FINANCIAL INFORMATION**

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<b>Plaintiff</b> McCormick, Matt			
Total Financial Assessment			358.00
Total Payments and Credits			358.00
<b>Balance Due as of 10/14/2022</b>			<b>0.00</b>
09/07/2022	Transaction Assessment		358.00
09/07/2022	TexFile Payment	Receipt # 2022-25995	(221.00)
09/07/2022	State Credit		(137.00)

# EXHIBIT C

## CITATION – TRC 99 and 106

THE STATE OF TEXAS

COUNTY OF DENTON

CAUSE NO. 22-7396-431

TO: ICE Enterprise, Inc., 963 S. Orchard St. Ste 200, Boise, ID 83705 (or wherever he/she may be found)

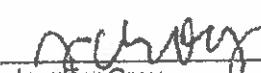
Delivered 9/14/2022  
Authorized Person

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may also be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Court:	431st Judicial District Court 1450 E. McKinney, 4th Floor, Denton, TX 76209
Cause No.:	22-7396-431
Date of Filing:	September 01, 2022
Document:	Plaintiff's Original Individual and Class Petition
Parties in Suit:	Matt McCormick; ICE Enterprise, Inc.
Clerk:	David Trantham, District Clerk, 1450 E. McKinney, Suite 1200, Denton, TX 76209
Party or Party's Attorney:	Chris R. Mittenberger 1360 N. White Chapel, Suite 200, Southlake, TX 76092

Issued under my hand and seal of this said court on this the 8th day of September, 2022.

David Trantham, District Clerk  
Denton, Denton County, Texas

BY:   Deputy  
Jennifer Croy

### Service Return

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m., and executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ M by delivering to the within named \_\_\_\_\_ in person a true copy of this citation, with attached copy(ies) of the Plaintiff's Original Individual and Class Petition, at \_\_\_\_\_.

Service Fee: \$ \_\_\_\_\_

Sheriff/Constable  
County, Texas

Service ID No. \_\_\_\_\_

Deputy/Authorized Person

### VERIFICATION

On this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed on the foregoing instrument and who has stated: upon penalty of perjury, I attest that the foregoing instrument has been executed by me in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of eighteen years and I am not a party to or interested in the outcome of this suit, and have been authorized by the Denton County Courts to serve process.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Notary Public

**Automated Certificate of eService**

This automated certificate of service was created by the efilng system. The filer served this document via email generated by the efilng system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 68051400

Status as of 9/8/2022 9:34 AM CST

Associated Case Party: Matt McCormick

Name	BarNumber	Email	TimestampSubmitted	Status
Chris Miltenberger		chris@crmlawpractice.com	9/8/2022 9:33:37 AM	SENT

22-7396-431

No. \_\_\_\_\_

<b>Matt McCormick, individually</b>	§	In the District Court
<b>and on behalf two classes</b>	§	
	§	
<b>Plaintiff</b>	§	
	§	
<b>vs.</b>	§	District Court # _____
	§	
<b>ICE Enterprise, Inc.</b>	§	
	§	
<b>Defendant</b>	§	Denton County, Texas

**PLAINTIFF'S ORIGINAL INDIVIDUAL AND CLASS PETITION**

Plaintiff, Matt McCormick ("Plaintiff") files this action against ICE Enterprises, Inc. ("Defendant") and respectfully shows the Court as follows:

**1. Discovery Control Plan.**

1.1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190 and requests the Court to enter the appropriate orders.

**2. Rule 28**

2.1. Pursuant to TEX. R. CIV. P. 28, Plaintiff moves that any partnership, unincorporated association, private corporation or individual doing business under an assumed name substitute a true name.

**3. Parties.**

3.1. Plaintiff is, and at all times mentioned herein was, a citizen and resident of Prosper, Denton County, Texas.

3.2. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).

3.3. Plaintiff is, and at all times mentioned herein was, a "person" as defined by Tex. Bus. & Com. Code § 1.201(b)(27).

- 3.4. Plaintiff is, and at all times mentioned herein was, a “purchaser” as defined by Tex. Bus. & Com. Code § 302.001(3).
- 3.5. Defendant is a corporation with an address of 963 S. Orchard St. Ste.200 Boise, ID 83705.
- 3.6. Defendant is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).
- 3.7. Defendant is, and at all times mentioned herein was, a “person” as defined by Tex. Bus. & Com. Code § 1.201(b)(27).
- 3.8. Defendant is, and at all times mentioned herein was, a “seller” as defined by Tex. Bus. & Com. Code § 302.001(5).

#### **4. Jurisdiction and Venue.**

- 4.1. Plaintiff claims for himself and the Class Members monetary relief over \$1,000,000 and non-monetary relief, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys’ fees, which is within the jurisdictional limits of this Court.
- 4.2. Venue is proper in Denton County because Plaintiff resides in Denton County and the actions complained about occurred in Denton County. Defendant made calls to a resident of Denton County.

#### **5. Nature of Suit**

- 5.1. As the Supreme Court has explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls.” The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress and state legislatures have been fighting back.
- 5.2. This action arises out of Defendant’s, practice of making telemarketing calls to individuals on the National Do-Not-Call Registry without prior

express written consent (or any consent whatsoever), in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”) and provisions of the Texas Business & Commerce Code.

- 5.3. Plaintiff’s telephone number was registered on the National Do-Not-Call Registry at the time of the calls and was so registered for more than 31 days prior to the calls.

## **6. THE NATIONAL DO NOT CALL REGISTRY**

- 6.1. The national Do Not Call Registry (the “Registry”) allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. See 47 C.F.R. § 64.1200(c)(2). A listing on the Registry “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.*
- 6.2. The TCPA and implementing regulations prohibit the initiation of telephone solicitations to residential and wireless telephone subscribers to the Registry. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2).
- 6.3. The regulations exempt from liability a caller who has obtained the subscriber’s signed, written agreement to receive telephone solicitations from the caller. 47 C.F.R. § 64.1200(c)(2)(ii). That agreement must also include the telephone number to which the calls may be placed. *Id.*

## **7. TEXAS’ ANTI SOLICITATION AND ROBO-CALLING STATUTES**

- 7.1. §302.101 of the Texas Business & Commerce Code prohibits sellers from engaging in telephone solicitation from a location in this state or to a purchaser located in this state unless the seller obtains a registration certificate from the Office of the Secretary of State for the business location from which the solicitation is made.
- 7.2. Sellers engaging in telephone solicitations are required to register, among other things, list “each telephone number to be used by the seller and the address where each telephone using the number is located.” §302.151(10).

- 7.3. §302.302(a) of the Texas Business & Commerce Code provides that a person who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation. Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover all reasonable cost of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorneys' fees.
- 7.4. Pursuant to § 305.053(a) of the Texas Business & Commerce Code, a person who receives a communication that violates 47 U.S.C. § 227, or a regulation adopted under that provision, may bring an action against the person who originates the communication for an injunction, damages or both.

## **8. GENERAL FACTUAL ALLEGATIONS**

- 8.1. Plaintiff is the user of his cell phone number (XXX) XXX-9117.
- 8.2. Plaintiff's cellular telephone number is a residential number.
- 8.3. Plaintiff's cellular telephone number is a telephone number assigned to a cellular telephone service.
- 8.4. Plaintiff's cell phone number has been on the National Do-Not-Call Registry since July 1, 2014.
- 8.5. Plaintiff did not provide prior express written consent (or any consent) to Defendant for the calls made by Defendant to Plaintiff.
- 8.6. Defendant made telephone solicitations by calling Plaintiff's cellular phone on at least the following occasions:
  - 8.6.1. January 25, 2022; April 10, 2022; June 7, 2022; June 10, 2022 (twice); June 14, 2022; and June 15, 2022 (twice).

8.7. Defendant called Plaintiff in an effort to sell Defendant's services to Plaintiff. Those services include, but are not limited to, helping individuals complete Department of Transportation registrations. Those services are listed by Defendant on its website<sup>1</sup> as:

- **US DOT Number Service:** Let us obtain a US DOT number for you.
- **MCS-150 Update Service:** Let us correct or update US DOT numbers (MSCA-1 form or MCS-150 update form) for you.
- **MC Number Interstate Operating Service:** Let us help you set up your MC authority number.
- **Unified Carrier Registration (UCR) Service:** Let us register or renew your annual UCR for you.
- **Process Agent BOC-3 Filing Service:** Let us help you submit your BOC-3 form and establish process agents.
- **DOT Authority Monitoring Service:** Let us monitor your operating authority and make sure your credentials are always up-to-date and in compliance.

8.8. Prior to receiving the calls Plaintiff had no established business relationship with Defendant. To this day Plaintiff does not have an established business relationship with Defendant.

8.9. Defendant knowingly violated the Texas Business & Commerce Code TCPA when it made the Calls to Plaintiff and Defendant's violations were willful.

8.10. The Calls were not made for emergency purposes.

8.11. Defendant has failed to register pursuant to § 302.101 of the Texas Business & Commercial Code to provide telephone solicitations. The <https://direct.sos.state.tx.us/telephone/telephonesearch.asp> site ("Texas Registration Database") does not contain Defendant's registration.

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<sup>1</sup> See <https://iceenterprise.biz/> (last accessed August 15, 2022).

8.12. Defendant does not qualify for an exemption under § 302.052 through § 302.061 of the Texas Business & Commercial Code or any section of Chapter 302 of the Texas Business & Commercial Code.

## 9. DEFENDANT'S LIABILITY

9.1. Because Defendant's calls constitute telemarketing, Defendant was required to obtain prior express consent from the persons to whom Defendant made the calls.

9.2. Plaintiff never provided Defendant with any consent, written or otherwise.

9.3. In addition, the TCPA prohibits making "any telephone solicitation" to a telephone number on the National Do-Not-Call Registry. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c); 47 C.F.R. § 64.1200(e).

9.4. The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).

9.5. A listing on the National Do Not Call Registry "must be honored indefinitely . . ." *Id.*

9.6. Plaintiff's number was on the National Do-Not-Call Registry for more than 31 days prior to the calls.

9.7. Plaintiff received more than one such telemarketing call in a 12-month period, as required by 47 C.F.R. § 64.1200© for violations of 47 U.S.C. § 227(c).

9.8. Pursuant to § 305.053(a) of the Texas Business & Commerce Code, a person who receives a communication that violates 47 U.S.C. § 227, or a regulation adopted under that provision, may bring an action against the person who originates the communication for an injunction, damages or both.

9.9. As set forth above, Defendant violated 47 U.S.C. § 227, or a regulation adopted under that provision.

9.10. Accordingly, Plaintiff is entitled to a permanent injunction, and the greater of \$500.00 for each violation or Plaintiff's actual damages for each call made by Defendant. *See Tex. Bus. & Com. Code § 305.053(b).*

9.11. Plaintiff is entitled to \$1,500 per call if Defendant's actions are found to be knowing or intentional. *See Tex. Bus. & Com. Code § 305.053(c).*

9.12. In addition, pursuant to § 302.101 of the Texas Business & Commerce Code, a seller is prohibited from engaging in telephone solicitation from a location in this state or to a purchaser located in this state unless the seller obtains a registration certificate from the Office of the Secretary of State for the business location from which the solicitation is made.

9.13. Defendant violated § 302.101 of the Texas Business & Commerce Code when it engaged in telephone solicitation without obtaining a registration certificate from the Office of the Secretary of State of Texas.

9.14. Accordingly, for violations of § 302.101 of the Texas Business & Commerce Code, Plaintiff is entitled to an award of no more than \$5,000 for each violation pursuant to § 302.302(a) of the Texas Business & Commerce Code.

9.15. In addition, pursuant to § 302.302(d) of the Texas Business & Commerce Code, Plaintiff is entitled to recover all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

9.16. Plaintiff was harmed by Defendant's actions of calling his residential phone while his number was on the Do Not Call Registry, without consent, in the following manners:

- 9.16.1. Plaintiff's privacy was invaded by Defendant;
- 9.16.2. Plaintiff was harassed and abused by Defendant's telephone calls;
- 9.16.3. Defendant's calls were a nuisance to Plaintiff;
- 9.16.4. Defendant's calls used the battery on Plaintiff's cell phone and Plaintiff had to pay to recharge the battery;
- 9.16.5. Plaintiff's phone was unavailable for other use while processing the illegal calls from Defendant;
- 9.16.6. Defendant illegally seized Plaintiff's telephone line while it made illegal calls to Plaintiff's cellular telephone;
- 9.16.7. Plaintiff's telephone line was occupied by multiple unauthorized calls from Defendant;
- 9.16.8. Defendant's seizure of Plaintiff's telephone line was intrusive; and
- 9.16.9. Plaintiff was inconvenienced by Defendant's calls, by among other things, hearing his ring and having to check the calling party.

9.17. These forms of actual injury are sufficient for standing and jurisdictional purposes.

#### **10. Class Action Allegations.**

- 10.1. The proposed Classes satisfy the requirements for a class action.
- 10.2. Plaintiff brings the claims for relief alleged in this petition pursuant to TEX. R. CIV. P. 42 on behalf of himself and classes defined as follows:

10.2.1. "Texas § 302.101 Class"

10.2.1.1. Plaintiff and all residents of the State of Texas, from four years prior to the filing of this Petition through the date of certification, to whose telephone number Defendant placed (or had placed on its behalf) a telephone solicitation when Defendant did not hold a registration certificate as required by Tex. Bus. & Com. Code § 302.101.

10.2.2. "Texas § 305.053"

10.2.2.1. Plaintiff and all residents of the State of Texas, from four years prior to the filing of this Petition through the date of certification, to whose telephone number Defendant: (1) placed (or had placed on its behalf) a call in violation of 47 U.S.C. § 227(c).

10.2.3. The Texas Classes are collectively referred to herein as the "Classes."

10.2.4. The following persons are excluded from the Classes:

- 10.2.4.1. (i) the judge(s) assigned to this case and his or her staff;
- 10.2.4.2. (ii) governmental entities;
- 10.2.4.3. (iii) Defendants and their affiliates; and
- 10.2.4.4. (iv) persons who have previously released Defendant of the claims raised by this case.

10.3. The Members of the Classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

10.4. For example, numerous consumers have posted complaints about Defendant's illegal telemarketing practices on Google Reviews:

10.4.1. "It's been three years guys, come on. Calling incessantly to tell you something was filed incorrectly. Playing under the idea that they're just trying to help. Arguing with anything you say in regards to being removed from call lists. Then after being rude enough to argue with

your requests, they try to tell you that you're being rude. How is this even a business? Total joke." Steven Bierlink, 1 Star Google Review.<sup>2</sup>

10.4.2. "They are extremely unprofessional. They call you over and over trying to get you to let them file your DOT services. They spam call me all the time leaving voice messages. I have asked them multiple times to remove me from there call list. They robo call me from different numbers all the time like i am going to change my mind." The Junk Transporter, 1 Star Google Review<sup>3</sup>

10.4.3. "You are violating the Do Not Call list. You use an auto dialer to call me 24 times in a row. I will be reporting which individual call which I believe is a violation of \$10,000 per time and I will provide them proof along with your (Michael Montgomery) recorded voice. Wish you the best" – Martin, 1 Star Google Review<sup>4</sup>

10.4.4. "SPAM CALL

Ignorant people when you answer  
Refuses to remove numbers from call list  
ONLY OUT TO LIE TO YOU AND TRY TO GET YOUR  
MONEY" – Dan Roylance, 1 Star Google Review.<sup>5</sup>

10.5. Other consumers have filed complaints with the Better Business Bureau:

10.5.1. "Since the middle of September, we have been getting daily sales calls from this company (844) 257-7802. It is the same prerecorded message which implies that they are part of the government / government agency. I finally called to ask that our company be taken off of this list. I mentioned that the calls have basically become a form of harassment. Instead of offering to take our number off of the list, they told me that they were within their right to continue to call. Both

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<sup>2</sup> <https://www.google.com/search?client=firefox-b-1-d&q=Interstate+Compliance+Enterprise#lrd=0x54ae562cecad3fdb:0xfa6df64af053e767.1...>, (last accessed August 15, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

yesterday and today they called twice per day." BBB Complaint, October 10, 2019<sup>6</sup>

10.5.2. "They call constantly telling me to do a biennial update to my FMCSA, however I have no, nor have I ever had any DOT vehicles and when I asked to be removed they tell me I have to pay them to get them to go away. Not to mention I have told them I am no longer the owner of the company they are inquiring about. The company was disbanded over a year ago. They threaten fines of \$1000 per day for not filing with them. They are nothing more than a shakedown. They have started finding and contacting my family and friends to push me to pay them for a service I don't use for a company I don't own. They have gone as far to contact my dead fiancés parents to push their claim." BBB Complaint, June 9, 2020<sup>7</sup>

10.5.3. "I do not know who these people are, I am a private citizen and no nothing of this "D.O.T. by anular new is currently do Federal Motor Carrier Safety Administration license" I have never owned a company, I would like to stop calling my cell phone multiple times a day. This is harrassment....." BBB Complaint, May 13, 2021<sup>8</sup>

10.5.4. "This business, interstate compliance enterprise keeps harassing us. We live in Oregon, not Idaho. We farm, not haul stuff. They need to stop harassing us. Thanks." BBB Complaint, May 14, 2021<sup>9</sup>

10.5.5. "In 2019 we signed up our usdot truck for a haul. We don't use it anymore and don't need it. They are calling my phone weekly threatening us with an audit or fines. They won't stop. Please help me. I told them to stop and it's getting worse." BBB Complaint, May 21, 2021<sup>10</sup>

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<sup>6</sup> See <https://www.bbb.org/us/id/nampa/profile/compliance-consulting/interstate-compliance-enterprise-1296-1000075850/complaints> (last accessed August 15, 2022).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

10.5.6. "These guys are a fraud they call \*\*\*\* times per week with robo calls claiming to need your binary update and want money when I don't even have an account. They never answer the phone or respond to stop calling just up the calls per week. I put a call block on and they just switch their numbers" BBB Complaint, December 8, 2021<sup>11</sup>

10.6. The exact number and identities of the persons who fit within the Classes are ascertainable in that Defendant and third parties maintain written and electronically stored data showing:

10.6.1. The time period(s) during which Defendant placed its calls;

10.6.2. The telephone numbers to which Defendant placed its calls;

10.6.3. The telephone numbers for which Defendant had prior express written consent;

10.6.4. The purposes of such calls; and

10.6.5. The names and addresses of Class members.

10.7. The Classes are comprised of hundreds, if not thousands, of individuals.

10.8. There are common questions of law and fact affecting the rights of the Members of the Classes, including, *inter alia*, the following:

10.8.1. Whether Defendant (or someone acting on its behalf) makes solicitations and telemarketing calls to telephone numbers registered on the National Do-Not-Call Registry;

10.8.2. Whether Defendant had the requisite registration certificate as required by Tex. Bus. & Com. Code § 302.101 when making telephone solicitations;

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<sup>11</sup> *Id.*

10.8.3. Whether Plaintiff and the Classes were damaged thereby, and the extent of damages for such violations; and

10.8.4. Whether Defendant should be enjoined from engaging in such conduct in the future.

10.9. Plaintiff is a member of the Classes in that Defendant placed two or more telemarking calls to his phone in a one-year period when his telephone number was on the National Do-Not-Call Registry.

10.10. Plaintiff's claims are typical of the claims of the Members of the Classes in that they arise from Defendant's uniform conduct and are based on the same legal theories as these claims.

10.11. Plaintiff and all putative Members of the Classes have also necessarily suffered concrete harm in addition to statutory damages, as all Members of the Classes spent time tending to Defendant's unwanted calls and suffered a nuisance and an invasion of their privacy.

10.12. Plaintiff has no interests antagonistic to, or in conflict with, the Classes.

10.13. Plaintiff will thoroughly and adequately protect the interests of the Classes, having retained qualified and competent legal counsel to represent him and the Classes.

10.14. Defendant has acted and refused to act on grounds generally applicable to the Classes, thereby making injunctive and declaratory relief appropriate for the Classes.

10.15. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

10.16. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since, *inter alia*, the damages suffered by each class member make individual actions uneconomical.

10.17. Common questions will predominate, and there will be no unusual manageability issues.

**11. FIRST CAUSE OF ACTION - Violations of Texas Business and Commerce Code, § 302.101**

11.1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

11.2. Defendant failed to obtain a registration certificate from the Office of the Secretary of State of Texas pursuant to violated § 302.101 of the Texas Business and Commerce Code.

11.3. Defendant placed telephone solicitations to Plaintiff's and the Class Members' telephone numbers.

11.4. Defendant's telephone solicitations were made from a location in Texas or to Plaintiff and the Class Members located in Texas.

11.5. Plaintiff and the Class Members are entitled to an award of up to \$5,000 for each violation and all reasonable cost of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

**12. SECOND CAUSE OF ACTION - Violations of Texas Business and Commerce Code, § 305.053**

12.1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

12.2. Defendant placed in a 12-month period at least one and may time more than one telemarketing telephone calls to Plaintiff's and the Class Members' respective telephone numbers.

12.3. Each of these calls violated 47 U.S.C. § 227(c).

12.4. Plaintiff and the Class Members are entitled to:

12.4.1. a permanent injunction to prevent any further violations of the Texas Business & Commerce Code, Chapter 305;

12.4.2. the greater of \$500 for each violation or Plaintiff's actual damages (*see* Tex. Bus. & Com. Code §304.053(b));

12.4.3. the greater of \$1,500 for each violation or Plaintiff's actual damages for each call made knowingly or intentionally (*see* Tex. Bus. & Com. Code §304.053(c)).

### **13. Claims for Relief**

13.1. The Texas Rules of Civil Procedure require that Plaintiff choose among several statements regarding the amount Plaintiff seeks. Accordingly, pursuant to Tex. R. Civ. P. 47, Plaintiff states that he seeks monetary relief over \$1,000,000 and non-monetary relief, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees, which is within the jurisdictional limits of this Court.

13.2. Plaintiff also seeks a demand for judgment for all the other relief to which Plaintiff deems himself entitled.

### **14. Conditions Precedent.**

14.1. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

### **15. Prayer for Relief**

15.1. Plaintiff prays for the following relief:

15.1.1. An order certifying the Classes as defined above, appointing

Plaintiff as the representatives of the Classes and appointing

Plaintiff's counsel as Class Counsel;

15.1.2. An order declaring that Defendant's actions, as set out above, violate the Texas Business and Commerce Code because they are a violation of 47 U.S.C. §§ 227 (c) and 47 C.F.R. §§64.1200(c);

15.1.3. An order declaring that Defendant's actions, as set out above, violate Tex. Bus. & Com. Code § 302.101.

15.1.4. An award of statutory damages under the Texas Business and Commerce Code;

15.1.5. An award of treble damages;

15.1.6. An award of reasonable attorneys' fees and costs, including the costs set forth pursuant to Tex. Bus. & Com. Code § 302.302(d); and

15.1.7. All other relief, in law and in equity, to which Plaintiff may be entitled.

## 16. Jury Demand

16.1. Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted:

By: /s/ Chris R. Miltenberger  
Chris R. Miltenberger  
Texas State Bar Number 14171200

The Law Office of Chris R. Miltenberger,  
PLLC  
1360 N. White Chapel, Suite 200  
Southlake, Texas 76092  
817-416-5060 (office)  
817-416-5062 (fax)  
[chris@crmlawpractice.com](mailto:chris@crmlawpractice.com)

Attorney for Plaintiff

# EXHIBIT D

## CITATION – TRC 99 and 106

THE STATE OF TEXAS

COUNTY OF DENTON

CAUSE NO. 22-7396-431

TO: ICE Enterprise, Inc., 963 S. Orchard St. Ste 200, Boise, ID 83705 (or wherever he/she may be found)

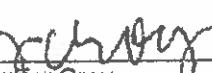
Delivered 9/14/2022  
Authorized Person

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may also be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Court:	431st Judicial District Court 1450 E. McKinney, 4th Floor, Denton, TX 76209
Cause No.:	22-7396-431
Date of Filing:	September 01, 2022
Document:	Plaintiff's Original Individual and Class Petition
Parties in Suit:	Matt McCormick; ICE Enterprise, Inc.
Clerk:	David Trantham, District Clerk, 1450 E. McKinney, Suite 1200, Denton, TX 76209
Party or Party's Attorney:	Chris R. Mittenberger 1360 N. White Chapel, Suite 200, Southlake, TX 76092

Issued under my hand and seal of this said court on this the 8th day of September, 2022.

David Trantham, District Clerk  
Denton, Denton County, Texas

BY:   Deputy  
Jennifer Croy

### Service Return

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ m., and executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ M by delivering to the within named \_\_\_\_\_ in person a true copy of this citation, with attached copy(ies) of the Plaintiff's Original Individual and Class Petition, at \_\_\_\_\_.

Service Fee: \$ \_\_\_\_\_

Sheriff/Constable  
County, Texas

Service ID No. \_\_\_\_\_

Deputy/Authorized Person

### VERIFICATION

On this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed on the foregoing instrument and who has stated: upon penalty of perjury, I attest that the foregoing instrument has been executed by me in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of eighteen years and I am not a party to or interested in the outcome of this suit, and have been authorized by the Denton County Courts to serve process.

Subscribed and sworn to before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Notary Public

AFFIDAVIT OF SERVICE

State of Texas

County of Denton

431st Judicial District Court

Case Number: 22-7396-431

## Plaintiff:

MATT MCCORMICK, INDIVIDUALLY AND ON BEHALF TWO CLASSES

vs.

## Defendant:

ICE ENTERPRISE, INC.

For: Chris Miltenberger  
Chris R. Miltenberger, PLLC

Received by Capitol Process Service on the 12th day of September, 2022 at 9:29 am to be served on ICE Enterprise, Inc., 963 S. Orchard Street, Suite 200, Boise, ID 83705. I, John Muir, being duly sworn, depose and say that on the 14th day of September 2022 at 12:34 P.M., executed service by delivering a true copy of the Citation, Plaintiff's Original Individual and Class Petition in accordance with state statutes in the manner marked below:

( ) PUBLIC AGENCY: By serving \_\_\_\_\_ as \_\_\_\_\_ of the within-named agency.

( ) SUBSTITUTE SERVICE: By serving \_\_\_\_\_ as

CORPORATE SERVICE: By serving David Drake as  
owner of ICE ENTERPRISES INC

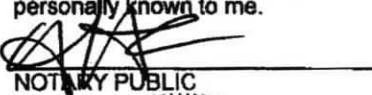
( ) OTHER SERVICE: As described in the Comments below by serving \_\_\_\_\_ as

( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: Male, white, grey hair, 6ft 0in, 190lbs, 55 years old.  
no facial hair.

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 14 day  
of Sept. 2022 by the affiant who is  
personally known to me.

  
NOTARY PUBLIC



  
PROCESS SERVER # N/A  
Appointed in accordance with State Statutes

Capitol Process Service  
P.O. Box 1518  
Georgetown, TX 78627-1518  
(512) 336-7378

Our Job Serial Number: 2022000635

**Automated Certificate of eService**

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Chris Miltenberger on behalf of Chris Miltenberger

Bar No. 14171200

chris@crmlawpractice.com

Envelope ID: 68279826

Status as of 9/20/2022 2:50 PM CST

Associated Case Party: Matt McCormick

Name	BarNumber	Email	TimestampSubmitted	Status
Chris Miltenberger		chris@crmlawpractice.com	9/15/2022 9:52:49 AM	SENT